



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

Vol. 141

WASHINGTON, THURSDAY, MAY 4, 1995

No. 73

House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, May 9, 1995, at 12:30 p.m.

Senate

THURSDAY, MAY 4, 1995

(Legislative day of Monday, May 1, 1995)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Let us pray:

Almighty God, on this National Day of Prayer, we join with millions across our land in intercession and supplication to You, the Sovereign Lord of the United States of America. As we sound that sacred word Sovereign, we echo Washington, Jefferson, Madison, and Lincoln along with other leaders through the years, in declaring that You are our ultimate ruler. We make a new commitment to be one Nation under You, God, and we place our trust in You.

You have promised that if Your people will humble themselves, seek Your face and pray, You will answer and heal our land. Lord, as believers in You, we are Your people. You have called us to be salt in any bland neglect of our spiritual heritage and light in the darkness of what contradicts Your vision for our Nation. Give us courage to be accountable to You and Your Commandments. We repent for the pride, selfishness, and prejudice that often contradict Your justice and righteousness in our society.

Lord of new beginnings, our Nation needs a great spiritual awakening. May this day of prayer be the beginning of that awakening with each of us in this Senate. We urgently ask that our hon-

esty about the needs of our Nation and our humble confession of our spiritual hunger for You may sweep across this Nation. Hear the prayers of Your people and continue to bless America. In Your holy name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. THOMAS. Mr. President, this morning the leader time has been reserved and there will be a period for morning business until the hour of 11:30, with Senators permitted to speak up to 5 minutes each; at 11:30 today, the Senate will resume consideration of H.R. 956, the product liability bill.

Under the provisions of the agreement reached last night, there will be a series of four consecutive rollcall votes beginning at 12:15 today. The fourth vote in the series will be on invoking cloture on the Gorton substitute amendment; therefore, Senators should be aware that second-degree amendments to the Gorton substitute must be filed 1 hour prior to that vote; further rollcall votes can be expected throughout today's session of the Senate.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. CAMPBELL). Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a transaction of morning business for not to extend beyond the hour of 11:30 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each; under the previous order, the Senator from Wyoming, [Mr. THOMAS], is recognized to speak for up to 30 minutes.

The Senator from Wyoming is recognized.

FRESHMAN AGENDA

Mr. THOMAS. Members will be relieved to know that there will be others joining me during this 30 minutes, other Members from our freshman group, to continue our discussion about the agenda for the Senate, the agenda for the Republicans, and of course the agenda for this country.

We feel very strongly, of course, that this is a great opportunity to move forward on the issues that were the issues talked about and voted on by Americans in the 1994 November election.

This is the greatest opportunity that we have had for a number of years to evaluate programs that have been in place, rather than continuing to simply put more money into programs when the results have not been what we expected. Now is an opportunity to take a look at the programs and see, in fact, if there can be changes made, to see if in fact, there are programs that do not need to be continued, that could better

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



Printed on recycled paper.

S6131

be done in the private sector, if there are consolidations that can be made so that we can do away with repetition and redundancy in programs. There is no question but that those exist.

Mr. President, we are excited by the opportunity. There are 11 Members who are in our first year in the U.S. Senate and are very proud and pleased to be there. More than that, I think we are excited at the chance to participate in change that has been needed for some time, participate in the change that voters sent Members here to accomplish this year, with the message clearly that there is too much Government and that it costs too much.

They sent Members here with a message that there are better ways of delivering services. We are not inclined to do away with programs and leave people without the assistance that properly comes from Government, but rather to find ways to help people help themselves back into a productive society. That is what it is all about.

I am very pleased, Mr. President, to be joined by the president of our freshman class, the Senator from Oklahoma.

NOVEMBER REVOLUTION

Mr. INHOFE. I thank the Senator from Wyoming. I think he said it very well. I think it is very important, and the 11 freshman Members are probably in a better position than anyone else to remind the people that what happened on November 8, 1994 in an appropriate way at the ballot box, was, in fact, a revolution.

It is the first time in about 40 years that we have been able to look at Government and redefine its role and answer the question, has Government become involved in more things in a heavyhanded way, than it was intended to be involved in?

I know it is the liberal agenda of giving away, having programs for all needs, taking care of everyone from the cradle to the grave, is something that is easy to demagog, but to stand here and know that there are limited resources, I think it is irresponsible to continue that.

I think the people in November voted for changes, not so much Republican versus Democrat. Sure, the Republicans took over the House, and they took over the Senate. That is the first time that has happened. The main thing is that we campaigned for things that we have consistently voted for that contradict the behavior of Congress for the past 40 years.

When we look at Government's role, we have to ask the question, is Government's responsibility to take care of all the social needs? It is a difficult thing to talk about because it is easy to demagog.

I was distressed probably as much as anyone was when the President and others went out and said, well, the Republicans are trying to take the milk away from babies during the nutrition program debate when, in fact, the Republicans were suggesting a 4½ percent increase.

This is very disturbing. The people have awakened in America and they do not buy that kind of talk anymore. They are going to demand changes.

I have heard, and there is a perception that the U.S. Senate is operating so slowly, that we are not getting anything done. Now, I suggest, Mr. President, that we operate differently in the Senate, and as one who used to serve in the House of Representatives the same as the Senator from Wyoming, maybe we like the way that operates a little bit better because it is faster. And, the occupant of the chair was also there and knows what I am talking about.

On the other hand, there was not a day that went by in the U.S. House of Representatives when I was over there when this conversation did not occur. One would say, "Are we really quite ready to vote on this? Should we refine it more?" The answer is always "Do not worry, the Senate will take care of that."

For the first time in my life, when I was elected this last time to the U.S. Senate, I realized what our Founding Fathers had in mind when they said they wanted a bicameral system. In fact, we have to slow that train down.

How slow has the train been? The agenda, the Contract With America, had 10 items in it. In the House of Representatives, they were able to pass 9 of the 10. The only area that they did not pass was term limitations. In the Senate, in just the first 3 months, we passed congressional accountability, that is forcing Government to live under the same laws we pass.

We passed an unfunded mandates bill. As a former mayor of a major city, I can say that the major problem that exists in cities in America today is the fact that the Federal Government tells them what to do but does not send the money down. They are called unfunded mandates. We have passed that major reform here in the U.S. Senate, along with congressional accountability. A line-item veto—we have talked about line-item veto now for a long period of time. Now we have passed it here. We passed a moratorium on endangered species.

So we have actually handled about three or four of the major contract items and we are on schedule to handle the rest of them. But I honestly believe it is a responsibility, as the Senator from Wyoming said, of the freshman class, those of us who heard the mandate on November 8, 1994, to keep this train on track and to keep focused. We still have to finish up the rest of the items.

Right now, as soon as I leave the floor, I will be going over to the Environment and Public Works Committee hearing. Over there we are handling another one of the contract items; that is, doing something about the heavyhandedness of Government through its EPA regulations: what is happening in this country with the Superfund; what is happening with wetlands; what is happening with endangered species.

Oklahoma is somewhat of an agricultural State. As I traveled through, campaigning, I do not remember, of the hundreds of farmers I talked to during the campaign, any of them coming up to me and saying, "I want to know what the farm bill is going to do. I want to know about price supports." What the farmers in Oklahoma and throughout America are concerned about is property rights. That is one of the things we talked about in the Contract With America, that we have the fifth amendment to the Constitution and the 14th amendment to the Constitution that guarantee our property rights, not to lose our property without due process. We all know when farmers have property that is declared to be wetlands, they lose the value of that, and I have every expectation we are going to be able to pass the Private Property Protection Act that is going to guarantee the protection of private property and the value of that property to all Americans. Again, this is one of the contracts.

In this same committee meeting we are going to be hearing about the Superfund problems that exist. We know, and it is a fact today, that there are people who have received phone calls and letters from the EPA that have put them out of business for something over which they had no control. One such case was a lumber store owner in Tulsa, OK, by the name of Jim Dunn. He got a letter from the EPA that would have put him out of business, invoking \$25,000 a day fines. Checking to see what he was guilty of, we found that for 10 years he used the same person to sell his crankcase oil to. This contractor was licensed by the Federal Government, by the State of Oklahoma, even by the county and City of Tulsa, yet they came back and traced some of that oil to a Superfund site and came to the conclusion that he was liable. In the absence of joint and several reform, he could be liable for the whole amount. And for that he was threatened to be charged a fine of \$25,000 a day and possible criminal sanctions. That is the very thing that we are not going to allow to happen. It is the overregulation, the heavyhandedness of Government.

The Endangered Species Act—I am very proud the Senator from Texas, Senator HUTCHISON, was able to get an amendment through on the floor to put some sanity on that, to slow that train down so that, before we add any new critters to the Endangered Species Act, we are able to sit back and look at the cost/benefit of all these things. It was not long ago they decided to put the Arkansas shiner under the Endangered Species Act. Here is a little minnow that I guess they have decided is more important than people are. It would cost the average farmer in Oklahoma who has runoff into the Canadian system about \$2,000 to protect this critter.

This is the type of foolishness we are going to stop. We are all sensitive to the environment and we are sensitive to the need for some controls. But we are not going to allow Government to continue its heavyhanded treatment of its citizens, the people who are out there who are paying for all this fun we are having in Washington.

So we have an agenda. Those of us who are the freshmen, the 11 freshmen—I am very pleased we are going to be driving this train, keeping it on track, keeping the focus, and not forgetting. Let me give assurances to everyone out there: We are not going to forget what the mandate was of November 8.

I yield the floor now to my very close friend from the House, where I served with him and was elected with him, and now he is a leader in the U.S. Senate, the Senator from Arizona, Senator KYL.

TAXATION, REGULATION, LITIGATION

Mr. KYL. Mr. President, during the campaign that the Senator from Oklahoma was just talking about that we just went through, I heard a phrase over and over again, "taxation, regulation, litigation," the three problems in this country that we have to do something about. The Senator from Oklahoma has just spoken eloquently about the matter of regulation. This Congress is going to do a lot to reform the regulatory climate in this country, to bring some common sense back into it.

The Judiciary Committee, on which I serve, just passed out a regulatory reform bill sponsored by the majority leader that is really going to get to the heart of some of the regulatory problems in our society today, bringing cost/benefit analysis and economic impact studies and risk assessments and peer review into the regulatory process, so you do not have the kind of noncommonsensical imposition of regulations such as those the Senator from Oklahoma was just talking about.

Let me turn to the third item in that trilogy, the matter of litigation. We are debating today, and have been for almost 2 weeks now, legal liability reform. It is part of what the House of Representatives did, and it is part of what this Senate is committed to do as well, to reform our broken tort system. Some call it the litigation lottery. It produces a tort tax on all of America because we end up paying higher premiums for insurance, higher costs for products, and, frankly, we do not get the benefit of a lot of improvements that could be made in pharmaceuticals and in products and so on because the manufacturers are afraid to experiment with anything new because they may get sued, they may have to pay big damages, and their costs would go up.

So what we are trying to do is reform that system so that all of America will benefit from improved technology, reduced insurance rates, reduced product costs, and, by the way, particularly for small businesses, not constantly suffering under the threat of being sued;

also, of course, the physicians and the hospitals and other health care providers whose medical malpractice premiums have skyrocketed in recent years because of the possibility that somebody is going to sue them. They end up practicing defensive medicine, offering all kinds of services and tests that probably are not necessary but which they prescribe in order to make sure that nobody can say they did not do the absolute maximum that was necessary for the patient's good.

So these are parts of the problem we are addressing in litigation reform. I would like to just isolate one specific one that I will be talking about in about an hour and a half in the context of the bill we are debating today. I have laid down an amendment to correct a small, but I think important, part of the bill that is before us today. Many States—most States, I suspect—have what are called alternative dispute resolution mechanisms, ways of resolving disputes short of going to trial. Trials are expensive. In the end, the people who win are the lawyers. So what we are trying to do is to get people not to always go to court but to try to resolve their differences short of going to court, and most States have those procedures.

There is an error in the bill that is before us, section 103. It deals with alternative dispute resolution. It says when a State has alternative dispute resolution, the parties should use that. And that is fine. But then it says, if a defendant refuses to go forward when a plaintiff has made an offer in good faith and that defendant has refused the offer in good faith to go forward with the alternative dispute resolution, then you can assess attorney's fees and costs against the defendant. But there is no such provision with regard to the plaintiff refusing to go forward in good faith.

Mr. President, either we should not have a penalty for either party refusing to go forward or there should be the same penalty on both parties, whichever one of them refuses to go forward in good faith. But you cannot have a situation where one of the parties has the dagger hanging over his head and the other party with no downside for refusing to go forward in good faith. One way or the other that has to be fixed.

First, I said, "Why don't we have a penalty for both parties?" One objection was we should not be dictating at the Federal level what the States should do. Whatever people advertise there in the State, let that be. Then I say fine. My amendment simply strikes the penalty that is in the bill at the Federal level so that whatever the State law is the State law is. In effect, my amendment would return this alternative dispute resolution mechanism to the States to be enforced however the State law enforces it. Of course, in every State, if there is a penalty, the penalty applies equally to the defendant or the plaintiff, whichever

one is refusing to go forward unreasonably.

So, Mr. President, I think this is something I will be talking about a little bit later but something my colleagues will want to fix. Our whole justice system is about fairness. The reason we are willing to put our lives and our fortunes into the hands of one person, a judge or 12 people on a jury, is because we have faith that the system is fair. One of the reasons we are talking about litigation reform today is because a lot of people do not think it is fair. It would be the height of unfairness to have a penalty apply to one side, the defendant, but not have that same penalty apply to the plaintiff for doing the same thing—for refusing to go forward to resolve the dispute alternative to a trial.

So my amendment will simply make it the same for both plaintiffs and defendants and reinstate State law as the guiding principle.

I will be talking about this a little bit later. I think it goes back to the whole notion we have to reform. We have to do things fairly, and, if we do things fairly in our society today, if people think they are getting a fair break regarding regulation, as the Senator from Oklahoma talked about, regarding taxation and regarding litigation, then people gladly shoulder the burdens inherent in supporting the Government and society at large. But when they do not think they are getting a fair shake—that is, when they begin to say this whole thing has to be changed—it has to be reformed.

Fortunately, at least the Senate Republicans who were just elected in the last election are here speaking every week about these kind of reforms. I think we are making a difference, Mr. President.

I know my colleague from Minnesota is here and wishes to continue the debate.

I yield the floor.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota [Mr. GRAMS] is recognized.

ONE HUNDRED DAYS OF REFORM FOR A NEW CENTURY OF RESPONSIBLE GOVERNMENT

Mr. GRAMS. Mr. President, I am glad to have the opportunity to join with my fellow freshmen today to speak on the topic this week, "100 Days of Reform for a New Century of Responsible Government."

Having just returned from a series of townhall meetings in my home State of Minnesota, however, it would be more appropriate to refer to it as moving forward with the people's agenda.

Over the Easter recess, I held town meetings in five cities, traveling over 1,000 miles, talking with hundreds of people across the State of Minnesota.

And the mandate they delivered last November is more focused than ever—fix things in Washington.